IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15493 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARATSTATEROADTRANSPORTCORPORATION - Petitioner(s)

Versus

N.M.CHISTY - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

None for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 01/08/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner – GSRTC has challenged the legality and validity of the judgment

and award passed by the Industrial Tribunal, Rajkot dated 18th January, 2005 passed in Reference (IT) No.44 of 2002.

2. The respondent was serving as Depot Manager-"B" with the petitioner corporation. Departmental inquiry was initiated against him alleging interalia that the report dated 11-1-2001 sent by the respondent was incorrect and 254 km was shown as excess in log sheet and by virtue of aforesaid fault, the corporation has suffered loss of Rs.2138/- which also came to be recovered from the respondent. After holding the departmental inquiry and after holding the charge proved against him, disciplinary authority imposed punishment of reverting the respondent to the post of Head Mechanic by order dated 29.6.2001. The respondent workman raised industrial dispute challenging the order of reversion to the post of Head Mechanic which was referred to the Industrial Tribunal, Rajkot for its adjudication being Reference (IT) No.44 of 2002 and after appreciation of evidence on record, the Industrial Tribunal held that the punishment of reversion to the post of Head

Mechanic is disproportionate to the charge and the misconduct proved against him and exercising the powers under Section 11-A of the Industrial Disputes Act, 1947 interfered with the order of punishment imposed by the disciplinary authority and imposed punishment of withholding of three increments without future effect and denying 50 % of the difference in the wages which might be due to substituting the order of punishment.

3. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Rajkot dated 18.1.2005 passed in Reference (IT) No.44 of 2002 in partly allowing the said reference, the petitioner corporation has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

4. Shri H.C.Rawal, learned advocate appearing on behalf of the petitioner has made the only submission that the respondent was the “Manager” and therefore, the Industrial Tribunal ought not to have considered the respondent as the “workman” as he could not have

been covered by the definition of “workman”. It is required to be noted that such contention was not raised before the Industrial Tribunal. Whether the respondent was working on the post of “Manager” and was performing the supervisory duty and whether he was “workman” or not, is fact which is required to be considered on appreciation of evidence before the Industrial Tribunal. When such contention is not raised before the Industrial Tribunal which requires appreciation of evidence, the same cannot be raised for the first time before this Court in a petition under Article 226 and 227 of the Constitution of India. Under the circumstances, the contention on behalf of the petitioner cannot be accepted.

5. So far as the submissions on behalf of the petitioner that the Industrial Tribunal has materially erred in exercising the powers under Section-11-A of the Industrial Disputes Act, 1947 are concerned, on appreciation of evidence the Tribunal has come to the conclusion that the punishment which was imposed by the disciplinary authority was shockingly disproportionate and not just, the same is

not required to be interfered with by this Court in a petition under Articles 226 and 227 of the Constitution of India as normally it is the Industrial Tribunal and / or the Labour Court to decide the adequacy of the punishment unless it is found that exercise of powers is not judicious or and/or excessive. In the facts and circumstances of the case, it cannot be said that exercise of powers by the Industrial Tribunal under Section-11-A of the I.D.Act is not judicious and / or is excessive.

6. Under the circumstances, there is no substance in the present petition and the same is required to be dismissed and is accordingly dismissed.

[M.R.Shah, J.]

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